

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1425 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 NO

GITABEN GANESHBHAI PRAJAPATI

Versus

PRAHLADBHAI J PATEL

Appearance:

MR PM THAKKAR SR ADVOCATE for Petitioner

MR PR NANAVATI for Respondent No. 1

MR KT DAVE APP for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 29/07/98

ORAL JUDGEMENT

This is an application with a prayer that the order dated 5.8.1997 passed by the Sub Divisional Magistrate, Ahmedabad in Remand Case No.4/97 be quashed and set aside.

2. Respondent No.1 had given an application for removal of nuisance under Section 133 of the Cr.P.C. before the Sub Divisional Magistrate, Ahmedabad. It has been alleged in the said application that the present petitioner is having a flour mill in Gopal Surya Complex and the functioning of the said flour mill creates nuisance. In the said application, the Sub Divisional Magistrate, by his order passed on 5.8.1998 restrained the present petitioner from doing the business of grinding spices etc. during the pendency of the said application.

3. The present application filed by the petitioner was admitted on 28.4.1998 and, by an ad-interim order, implementation of the order dated 5.8.1997 passed by the Sub Divisional Magistrate was stayed.

4. Learned Senior Advocate Shri P.M.Thakkar has appeared for the petitioner, learned Advocate Shri P.R. Nanavati for Respondent No.1 and learned A.P.P. Shri K.T.Dave has appeared for Respondent No.2.

5. At the time of hearing of this application, learned Senior Advocate Shri P.M.Thakkar has fairly submitted that, if running of the flour mill is disturbing respondent No.1, the petitioner will not operate the flour mill after 7.30 p.m. and before 8.00 a.m. He has made this statement without prejudice to the averments and contentions made in the application.

6. In view of the above statement and in view of the fact that application under Section 133 of the Cr.P.C. is pending before the Sub Divisional Magistrate, Ahmedabad, it will be just and proper if the Sub Divisional Magistrate, Ahmedabad is given a direction to dispose of the proceeding pending before him at an early date. Looking to the facts of the case, the flour mill will be operated, as per the assurance given by learned Senior Advocate Shri P.M.Thakkar on behalf of the petitioner, between 8.00 a.m. and 7.30 p.m. during the pendency of the proceeding pending before the Sub Divisional Magistrate, Ahmedabad. No harm would be caused to respondent No.1 if the Sub Divisional Magistrate is directed to dispose of the application pending before him as soon as possible and preferably within a period of three months from the date of receipt of the Writ by him.

7. In the circumstances, it is ordered that the Sub Divisional Magistrate, Ahmedabad shall dispose of the application filed under Section 133 of the Cr.PC referred to hereinabove as soon as possible and preferably within

a period of three months from the date of receipt of the Writ by him. During the pendency of the said application, the petitioner may run his flour mill from 8.00 a.m. to 7.30 p.m. Learned Advocates for the parties assure that the petitioner and respondent No.1 will extend their full cooperation in the proceeding pending before the Sub Divisional Magistrate.

8. In view of the above, this application is disposed of as partly allowed. Rule is made absolute to the above-referred extent. Direct Service is permitted.

Sd/-

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[KMG Thilake]